



September 10, 2021

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United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
Attn: Judge Brian M. Cogan

**Re: Lynda Cutbill v. Cold Spring Harbor Central School
Central School District, et al.
Docket No: 21 Civ. 3326
Our File No: 23728.00002**

Dear Judge Cogan:

Our office represents defendants Cold Spring Harbor Central School District and Cold Spring Harbor Central School District Board of Education in the above matter. Please accept this as Defendants' supplement to the joint letter filed by the parties in preparation for the initial conference as requested by Your Honor on September 10, 2021.

As stated initially in the joint letter filed with the Court on September 9, 2021, Defendants' position is they were unaware Mr. Kail posed any risk to Ms. Cutbill and were not aware of any prior accusations against Mr. Kail similar in nature to those alleged in this case. We apologize for not providing additional information to support this position in the initial letter.

Defendants have been hampered by the passage of forty years since the events in question allegedly took place, and as such, Defendants' investigation remains ongoing. Based on Defendants' ongoing investigation and initial review of Mr. Kail's personnel file, it appears as though Mr. Kail was a model teacher who showed no evidence of behavior that would provide the School District with notice of the conduct alleged in the complaint prior to its occurrence. While evidence of Mr. Kail's inappropriate conduct came to light in 1980, at present, it is not known if such conduct was directed at the plaintiff. Regardless, Mr. Kail was reprimanded at the time and defendants had no knowledge of further problematic conduct with Mr. Kail up to and including the point of plaintiff's graduation from Cold Spring Harbor High School in 1982. With discovery in its early stages, defendants are not yet in possession of plaintiff's applicable records to assess the extent of damages

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related to the incidents complained of.

The foregoing constitutes Defendants' factual and legal basis for their defense and is contemplated to be the basis for an eventual summary judgment motion.

We thank the Court and Your Honor for their courtesy in allowing Defendants to supplement the letter filed on September 9, 2021 and again apologize for not including further details in the initial joint letter filing.

Best regards,

Wilson Elser Moskowitz Edelman & Dicker LLP

A handwritten signature in blue ink, appearing to read 'R. W. Berbenich'.

Robert W Berbenich

cc:

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